

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (this "Agreement") is entered into this 26th day of February 2019 (the "Effective Date") by and between THE BOARD OF EDUCATION OF MONTGOMERY COUNTY, which operates a system of public schools commonly known as Montgomery County Public Schools (hereinafter referred to as "MCPS"), and GREAT MINDS, LLC (hereinafter referred to as the "Contractor"), each referred to individually as a "Party" and collectively as the "Parties."

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MCPS and the Contractor agree as follows:

ARTICLE I. STATEMENT OF WORK

- A. The Contractor agrees to provide the following Math curricular and instructional materials for Pre-Kindergarten – Grade 5 in accordance with MCPS Request for Proposals No. 4478.1 (the "RFP").
 - 1) Eureka Math: A complete Prekindergarten through Grade 5 mathematics curriculum designed to help students truly understand math, connect it to the real world, and solve problems they have never encountered. The curriculum teaches the story of math through expertly crafted lessons that are carefully sequenced. The Eureka Math curriculum seeks to help students gain a deep conceptual understanding of math while also emphasizing strong computational skills. One of the curriculum's primary goals is to show children multiple ways of solving problems. Offering different methods and strategies for solving a problem supports student learning and helps prevent students from giving up on that problem, or worse, on math itself. Beyond simply learning the process for solving a problem, Eureka Math students discover why that process works. Real-world problem solving, as opposed to rote memorization, empowers students to become not only literate in math but fluent in it.
- B. In particular, the Contractor warrants that it is providing deliverables, products, and/or services in compliance with the requirements set forth in Section 3.0 (Scope of Services) of the RFP. The Contractor's deliverables, products, and/or services are further elaborated in the Contractor's Best and Final Offer and additional Contractor Documents attached hereto and incorporated herein as Attachment A.
- C. The Contractor agrees that any substantive changes to the Contractor's deliverables, products, and or services that affect classroom instruction shall not be instituted during a school year. The Contractor agrees to provide MCPS with written notice of any such changes at least three months in advance of the beginning of any school year.
- D. For clarification, the Parties acknowledge and agree that MCPS is not purchasing access to or use of the Edulastic website and system, which is owned, operated, and/or provided by Edulastic, Inc. and/or its parent company Snapwiz, Inc. ("Edulastic"), or any other associated products, including Affirm. The Edulastic website and system and any other

associated products are hereby outside the scope of this Agreement, and by signing this Agreement, MCPS does not agree to any Terms and Conditions, Privacy Policy, or other contract offered by Edulastic.

ARTICLE II. TERM

This Agreement shall be for a period of performance beginning on the Effective Date indicated above and continue until June 30, 2022 (the "Term"), unless sooner terminated or extended as provided in the MCPS General Contract Articles (as referenced in Article VI below). MCPS may extend the Term for three additional terms of one year each. Any pilot use of the Contractor's deliverables, products, and/or services by MCPS Users (as defined in Article 18 of the MCPS General Contract Articles) or any training or implementation services provided by the Contractor to MCPS prior to the Effective Date shall be governed by this Agreement and the MCPS General Contract Articles.

ARTICLE III. PROJECT CONTACTS

The designated MCPS Project Contact(s) who will oversee and coordinate the Contractor's work shall be:

Niki Hazel
Director, Department of Elementary Curriculum and Districtwide Programs
Office of Curriculum and Instructional Programs
850 Hungerford Drive, Room 246
Rockville, MD 20850
(240) 740-3930
Niki_T_Hazel@mcpsmd.org

Siobhan Alexander
Director, Elementary Integrated Curriculum Team
Office of Curriculum and Instructional Programs
850 Hungerford Drive, Room 247
Rockville, MD 20850
(240) 740-4090
Siobhan_M_Alexander@mcpsmd.org

Sheila Berlinger
Supervisor, Elementary Integrated Curriculum Team
Office of Curriculum and Instructional Programs
850 Hungerford Drive, Room 247
Rockville, MD 20850
(240) 740-4082
Sheila_J_Berlinger@mcpsmd.org

The designated Contractor Project Contact(s) shall be:

Jessica Trahan

Great Minds, LLC
55 M Street, S.E.
Washington, D.C. 20003
(704) 609-4453
Jessica.trahan@greatminds.org

Each Party may change its designated project contact by giving written notice to the other Party.

The Contractor agrees to exercise reasonable efforts to forward any questions, requests, or other correspondence received directly from MCPS Users, parents, or other MCPS community members regarding the deliverables, products, and/or services provided under this Agreement to the MCPS Project Contacts or their designee.

ARTICLE IV. PAYMENTS

The total cost for the deliverables, products, and/or services to be provided under this Agreement shall not exceed \$6,850,760 over the three year Term and shall not exceed \$1,149,000 for the first year of the Term as approved by the Board of Education on January 8, 2018, unless otherwise agreed to by a written amendment duly executed by the Parties. During the Term and any additional renewal term, the price per student for student materials is [REDACTED] the price per teacher for teacher materials in the first instance is [REDACTED] and [REDACTED] each year thereafter, and the price per day of professional development services is [REDACTED]. The Contractor shall be paid in accordance with Article 8 of the MCPS General Contract Articles.

ARTICLE V. LICENSE TO USE CONTRACTOR'S DELIVERABLES, PRODUCTS, AND/OR SERVICES

- A. Availability. Subject to the terms of Addendum 1, the Contractor will ensure that the deliverables, products, and/or services are available to MCPS twenty-four (24) hours per day, seven (7) days per week, and otherwise in accordance with this Agreement, as applicable.
- B. License Grant. In furtherance of MCPS' public purpose, the Contractor hereby grants to MCPS a non-exclusive, royalty-free, non-transferable, irrevocable, worldwide right and license, exercisable by and through its MCPS Users, to the Contractor's deliverables, products, and/or services during the Term of this Agreement as set forth in Article II.
 - 1) Eureka Math Mid-Module and End of Module Assessment Bank: Notwithstanding the foregoing, during the Term of this Agreement, the Contractor shall provide MCPS with its proprietary Eureka Math Mid-Module and End of Module Assessment Bank (the "Assessment Bank") in a QTI digital format. The Contractor hereby grants to MCPS a limited, revocable, non-exclusive, non-sublicensable, and non-transferable license to distribute, display, modify, and otherwise use the Assessment Bank within MCPS schools through MCPS' learning management system in conjunction with the Eureka Math curriculum for internal, educational, noncommercial purposes only. MCPS shall not distribute, display, or otherwise use the Assessment Bank outside of MCPS schools or for any purpose other than as stated above. The license fee for use of the Assessment

Bank is included in the price per student for student materials set forth in Article IV of this Agreement. Upon expiration or earlier termination of this Agreement, MCPS shall delete the Assessment Bank, including without limitation any and all modifications to the Assessment Bank items made by MCPS.

- C. The Parties agree that any requirements set forth by the Contractor that use of its deliverables, products, and/or services be for private, personal, and/or non-commercial purposes shall be of no force or effect.
- D. The Contractor acknowledges that MCPS may disclose reports or information generated through the Contractor's deliverables, products, and/or services to MCPS Users, consistent with applicable law.
- E. Prior to allowing any MCPS User access to the Products and Services, MCPS will ensure that such MCPS Users are notified of the rules and requirements for MCPS network usage, including but not limited to MCPS Regulation IGT-RA, *Use Responsibilities for Computer Systems, Electronic Information, and Network Security*, and MCPS agrees to reasonably enforce such requirements against such MCPS Users.
- F. Copyright and Proprietary Rights. MCPS agrees that the Contractor's deliverables, products, and/or services, including the Assessment Bank, and the content contained therein are the sole property of the Contractor and its licensors and are protected by United States and International Copyright laws. All copyright, trademark, and other proprietary rights in the Contractor's deliverables, products, and/or services, including but not limited to text, graphics, images, code, illustrations, designs, icons photographs, video clips, and written and other materials are reserved by the Contractor and its licensors. MCPS agrees that it will not use the Contractor's deliverables, products, and/or services in any manner that infringes the proprietary rights of the Contractor or its licensors.
- G. License Restrictions.
 - 1) MCPS agrees that it will not, nor permit any of MCPS Users, to: (a) re-sell, rent or lease the Contractor's deliverables, products, and/or services or any part of them; (b) copy any part of the Contractor's deliverables, products, and/or services, except where specifically indicated otherwise or for back-up purposes; (c) reverse engineer, decompile, or disassemble the Contractor's deliverables, products, and/or services or convert them into any other format or medium, provided that technical modifications shall be allowed where necessary for MCPS to exercise its licensed rights in all media and formats; (d) use more copies of the Contractor's deliverables, products, and/or services, or deploy the Contractor's deliverables, products, and/or services on more devices or at more sites than authorized by the Contractor; or (e) sub-license the Contractor's deliverables, products, and/or services except as permitted by the Contractor.
 - 2) MCPS agrees to use the Contractor's deliverables, products, and/or services in compliance with all applicable laws, rules, and regulations, and Contractor's policies, set forth in Article VIII below, to the extent that such Contractor's policies are not in

conflict with this Agreement.

ARTICLE VI. GENERAL CONTRACT ARTICLES

The MCPS General Contract Articles are incorporated herein and made a part of this Agreement as Attachment B.

- A. As stated in the RFP, with regard to Article 8.D. of the MCPS General Contract Articles, MCPS reserves the right to submit payment in the form of credit card, Single Use Account (SUA), or Automated Clearing House (ACH). The Contractor shall not assess MCPS with any additional charge, fee, or price for the use of these electronic payment methods. For purposes of clarification, MCPS agrees to submit payments to the Contractor by ACH.
- B. With regard to Article 18.D.4. of the MCPS General Contract Articles, the Contractor shall sign the Student Privacy Pledge by June 30, 2019.
- C. Article 18.H. is amended by adding "Within 30 days of receipt of written request by MCPS" to the beginning of Paragraph 1.
- D. As stated in the RFP, as a note of clarification, Article 19 of the MCPS General Contract Articles applies to any deliverables, products and/or services that the Contractor develops specifically for MCPS pursuant to the RFP, not to the Contractor's existing off-the-shelf products and/or services. MCPS understands and acknowledges that the Contractor retains all intellectual property rights to its existing off-the-self products and/or services.

ARTICLE VII. DATA SHARING AND STUDENT PRIVACY REQUIREMENTS

The following provisions, in addition to and consistent with the data collection and confidential information provisions set forth in Article 18 of the MCPS General Contract Articles, shall together constitute the data sharing agreement between the Parties as required by MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*.

A. Purpose and Scope

- 1) For the use of the Contractor's deliverables, products, and/or services for the purposes set forth in Article I, MCPS and/or MCPS Users are required to provide certain personally identifiable information (as defined in Article 18 of the MCPS General Contract Articles) to the Contractor. Personally identifiable Confidential Information of MCPS Users that MCPS will provide to the Contractor and/or that MCPS Users will input into the Contractor's deliverables, products, and/or services include the data elements listed in Attachment C.
- 2) Other than the personally identifiable Confidential Information indicated in Attachment C, no other personally identifiable information shall be shared between MCPS or MCPS Users and the Contractor.

B. Use of Confidential Information

- 1) The Contractor acknowledges that for the purposes of this Agreement, it will be designated as a "school official" with "legitimate educational interests" in MCPS education records, as those terms have been defined under FERPA and its implementing regulations, and the Contractor agrees to abide by the FERPA limitations as well as those limitations established by state law and regulation, including Code of Maryland Regulations (COMAR) 13A.08.02, and requirements imposed on school officials. The Contractor will use Confidential Information only for the purpose of fulfilling its duties under this Agreement for MCPS' benefit, and will not share such data with or disclose it to any third party except as provided for in this Agreement, required by law, or authorized in writing by MCPS.
- 2) MCPS hereby consents to Contractor's use of Globant and Mobomo as subcontractors and/or third party service providers provided that the Contractor and its subcontractors and/or third party service providers abide by this Agreement and follow the non-disclosure requirements set forth in Article 18.C.6. of the MCPS General Contract Articles.

C. Data Retention and Destruction

- 1) The Contractor agrees to provide MCPS access to the Contractor's deliverables, products, and/or services to create, manually upload, and delete Confidential Information on a per-MCPS User basis.
- 2) Following the expiration or earlier termination of the Agreement, at MCPS' option and upon its written request, the Contractor agrees to, at MCPS' reasonable expense, migrate Confidential Information to the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems), and networks, of MCPS or any of its designees (collectively, "MCPS Systems"), taking all steps required or reasonably requested to make an orderly transition of the Confidential Information to the MCPS Systems and to assist MCPS and any of MCPS' designees in migrating such Confidential Information to the MCPS Systems in both Contractor's data format and a platform-agnostic format.
- 3) Upon completion of the services described in Article VII.C.2. above, or confirmation by MCPS that it has decided not to exercise its option to request the services set forth therein, and prior to destroying or permanently deleting Confidential Information pursuant to Article 18.H. of the MCPS General Contract Articles, the Contractor, upon request by MCPS, shall provide MCPS with either (1) files of raw data, summary data, and reports of such Confidential Information, or (2) access to the Contractor's deliverables, products, and/or services for MCPS to generate and export such files.

D. Contractor's Security of Confidential Information

- 1) The Contractor shall not permit Confidential Information to be maintained or stored on mobile computing devices (e.g. laptops or tablets), unless such mobile computing

devices are encrypted, centrally managed with respect to configuration updates and anti-virus, password protected, and that all such devices will be scanned at the expiration or termination of the Agreement to ensure that no Confidential Information remains stored on such mobile computing devices.

- 2) Encryption. The Contractor assures MCPS that the Contractor's deliverables, products, and/or services are only accessible via https and all public network traffic is encrypted with industry standard encryption. Encryption of data at rest will be implemented for all stored data.
 - 3) MCPS Users will require usernames and passwords to access the Contractor's deliverables, products, and/or services. MCPS understands that MCPS Users are responsible for the integrity and security of usernames and passwords.
- E. To the extent that the Contractor conducts business in states other than Maryland that by law require more robust protections of student information than as described in this Agreement, the Contractor agrees that MCPS Users will receive the benefit of such protections.

ARTICLE VIII. OTHER PROVISIONS

- A. The deliverables, products, and/or services to be delivered or performed by the Contractor shall be in accordance with the following documents in the order of precedence listed:
- 1) This Agreement and Addendum 1 (Service Level Agreement);
 - 2) The MCPS General Contract Articles;
 - 3) The RFP; and
 - 4) The Contractor's Best and Final Offer and the Contractor Documents (inclusive of the Contractor's Professional Development Services Terms and Conditions ("PD Terms and Conditions"), Terms of Service for Use of the Great Minds Website ("Website Terms of Service"), and Privacy Policy.
- B. The Contractor agrees to notify the MCPS Project Contact(s) in writing of any changes to such Contractor documents at least 30 days in advance. Any changes that are inconsistent with this Agreement or materially alter the obligations of the Parties under this Agreement shall not apply to MCPS Users, without MCPS' express written consent. In no case will the Contractor alter how Confidential Information is collected, used, or shared under the terms of this Agreement without 30 days advance notice and express written consent from MCPS.
- C. For the avoidance of doubt, with respect to certain inconsistencies between this Agreement and the PD Terms and Conditions attached hereto and incorporated herein as part of Attachment A, the Parties acknowledge that Sections 1.2, 4.3, 5, 10-13, 14.1, and 15-18 of the PD Terms and Conditions are entirely superseded by the terms of this Agreement and the MCPS General Contract Articles. The Parties also acknowledge the following changes to the PD Terms and Conditions:

- 1) Section 3 (Delivery Deadlines): The last two sentences of this section are hereby deleted in their entirety.
 - 2) Section 9 (Intellectual Property Rights):
 - (i) The following sentence is added before the last sentence, "Notwithstanding the foregoing, the Customer retains the right to use such Derivative Works during the term of the Agreement for Professional Services executed between the parties and any renewal term thereof."
 - (ii) The following phrase is added to the beginning of the last sentence, "Unless otherwise agreed to by the Parties." For clarification, the Parties agree that this Section 9 is subject to Article V of this Agreement.
 - 3) Section 14 (General Conditions): Sub-section 14.2 is modified by adding the following phrase to the end of the sub-section, "unless permission is otherwise granted by GM."
- D. For the avoidance of doubt, with respect to certain inconsistencies between this Agreement and the Website Terms of Service attached hereto and incorporated herein as part of Attachment A, the Parties acknowledge that (i) Paragraphs 2-5, 7, and 9; and (ii) Sections 1.m., 2.a.3., 3.a.1.A.iv., and 4-7 of the Website Terms of Service are entirely superseded by the terms of this Agreement and the MCPS General Contract Articles. The Parties also acknowledge the following changes to the Website Terms of Service:
- 1) Paragraph 6: The first four sentences of Paragraph 6 are hereby deleted in their entirety.
 - 2) Paragraph 8: The last sentence of Paragraph 8 is hereby deleted in its entirety.
 - 3) Section 8 (Interpretation): The paragraphs after sub-section d. are hereby deleted in their entirety.
- E. For the avoidance of doubt, with respect to certain inconsistencies between this Agreement and the Privacy Policy attached hereto and incorporated herein as part of Attachment A, the Parties acknowledge that Paragraph 5 and Sections III, VI, VII of the Privacy Policy are entirely superseded by the terms of this Agreement and the MCPS General Contract Articles. The Parties also acknowledge the following changes to the Privacy Policy:
- 1) Section I ("Information Collected by Great Minds"): The second paragraph under the sub-section entitled, "Information that You Provide," is hereby deleted in its entirety. For clarification, the Parties acknowledge and agree that MCPS is not providing any de-identified or identifiable student information to Great Minds.
 - 2) Section II ("How Great Minds May Use Your Information"):
 - (i) The second paragraph under the sub-section entitled, "Information Provided by You," is hereby modified by inserting the phrase, "provided that such communications shall not be based on any targeting of MCPS Users," after the

phrase: "newsletter and other communications." For clarification, the Parties acknowledge and agree that MCPS may direct Great Minds to send such newsletters and other communications to a single district contact at its discretion."

(ii) The third paragraph under the sub-section entitled, "Information Provided by You," is hereby modified by: (i) inserting the phrase, "only for lawful quality assurance purposes, including" after the phrase, "aggregated, anonymized reporting;" and (ii) deleting the second sentence in its entirety. For clarification, the Parties acknowledge and agree that this third paragraph is subject to Article 18.D.2. of the MCPS General Contract Articles.

(iii) The paragraph under the sub-section entitled, "Website Usage Information," is hereby deleted in its entirety and replaced with the following in lieu thereof:

"We use website usage information to provide the deliverables, products, and/or services, including to administer the website, monitor and diagnose problems with it, and remember you when you return so that you don't have to resubmit your information."

3) Section IV ("How Great Minds Secures and Protects Your Information"):

(i) The first sentence of the first paragraph is hereby deleted in its entirety and replaced with the following in lieu thereof: "We maintain appropriate administrative, physical, and technical safeguards in accordance with industry best practices to safeguard your information and protect it from loss, theft, misuse, or alteration."

(ii) The last sentence of the third paragraph is hereby modified by inserting the phrase, "and applicable agreements with you" after "all applicable laws." For clarification, the Parties acknowledge and agree that this sentence is subject to the requirements set forth in Article 18.G. of the MCPS General Contract Articles.

4) Section V ("How to Change Your Information or Opt Out of Communications"): The first sentence is hereby modified by inserting the phrase, "or remove" after "You may review or change."

F. With respect to the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. § 6501-6505, and its implementing regulations (16 C.F.R. § 312, *et seq.*), the Parties acknowledge that COPPA permits MCPS, acting in the role of "parent," to provide required consents regarding personal information of students who are under the age of 13, where such consent is limited to the collection of personal information from students for the educational use and benefit of MCPS and does not extend to any commercial purpose. The Parties acknowledge that the Contractor, an "operator" under COPPA, relies on this form of consent for such MCPS Users under this Agreement. The Contractor will provide MCPS all notices required under COPPA, as applicable, to ensure that MCPS, in providing its COPPA consent, has full information and assurance that the Contractor's practices comply with COPPA.

- G. Any notice by a Party under this Agreement shall be in writing and either personally delivered, sent via email, a nationally recognized overnight delivery service (such as Federal Express), first class postage prepaid mail, or by fax, addressed to the other Party at the address specified in this Agreement, or such other address of which either Party may from time to time notify the other. Notices shall be deemed given when received by the receiving Party. All notices to Contractor shall be sent to: Contracts Department, Great Minds, LLC, 55 M Street SE, Washington, D.C. 20003, contracts@greatminds.org. All notices to MCPS shall be sent to the MCPS Project Contact with copy to: Director, Department of Materials Management, 580 North Stonestreet Avenue, Rockville, MD 20850, 301-279-4998 (fax).
- H. Waiver. No waiver by either Party of any failure to observe or perform any term, condition, or covenant of this Agreement shall operate as a waiver of such term, condition, or covenant, or of any subsequent failure thereof.
- I. Third Party Beneficiaries. The provisions of this Agreement are for the sole purpose of setting forth the respective rights and obligations of the Parties. None of the provisions of this Agreement are intended for the benefit of any third party, and no such third party shall have the right to enforce the provisions of this contract.
- J. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ONE AGAINST THE OTHER WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR THE RELATIONSHIP OF MCPS AND THE CONTRACTOR HEREUNDER.
- K. The Parties' obligations under Articles VII, as well as any other of the Parties' obligations and warranties herein or in the MCPS General Contract Articles, which directly or indirectly are intended by their nature or by implication to survive the Parties' performance, shall survive the expiration, cancellation, or earlier termination of this Agreement.
- L. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. Each Party may rely on facsimile or Adobe Portable Document Format (PDF) signature pages as if such facsimile or PDF signature pages were originals.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the last signature below.

WITNESS:

BOARD OF EDUCATION OF
MONTGOMERY COUNTY operating
MONTGOMERY COUNTY PUBLIC SCHOOLS

Lane Muddal

By: *Shebra L. Evans*
Shebra L. Evans
President

Date: 2-25-2019

Bandra L. Papd

By: *Jack R. Smith*
Jack R. Smith, Ph.D.
Superintendent of Schools

Date: 2/24/19

WITNESS:

GREAT MINDS, LLC

Lynne Munson

By: *Lynne Munson*
Name: Lynne Munson
Title: Founder and CEO

Date: 2/13/19

ATTACHMENT A
(Contractor's Best and Final Offer and Contractor's Documents)



GREAT MINDS

**Best and Final Offer: Montgomery County RFP 4478.1
PK-5 Math**

	Price Per Teacher Year 1	Price Per Teacher Year 2	Price Per Teacher Year 3	Price Per Teacher Year 4	Price Per Teacher Year 5	Price Per Teacher Year 6
Teacher Materials - PK-5						
1 Print Teacher Edition and 1 year Digital Suite Teacher License for New Teachers	██████████	██████████	██████████			
1 Digital Suite License for Returning Teachers		██████████	██████████	██████████	██████████	██████████

Notes: 1) Teachers who teach in both English and Spanish will receive Teacher Digital Suite subscriptions that include English and Spanish access for the price of one. It is understood print Teacher Editions would be delivered in early 2019. 2) Subscriptions to Eureka Math Digital Suite for all PK-5 teachers, as well as Leaders and Train-the-Trainers, will begin in Spring 2019. 3) Subscriptions to the Digital Suite will also begin in early 2019 for all teachers implementing Eureka Math in SY 20-21 and 21-22 at no additional charge until they begin their implementation.

Shipping is included at no additional charge.

	Price Per Student Year 1	Price Per Student Year 2	Price Per Student Year 3	Price Per Student Year 4	Price Per Student Year 5	Price Per Student Year 6
Student Materials - Grades K-5						
<ul style="list-style-type: none"> Eureka Learn - Print Consumable • Application Problem • Problem Set • Templates • Exit Tickets 						
<ul style="list-style-type: none"> Eureka Practice - Print Consumable • Sprint and Fluency Activities 						
<ul style="list-style-type: none"> Eureka Succeed - Print Consumable • Homework • Homework Helpers Digital 						
<ul style="list-style-type: none"> Mid-Module and End of Module Assessment License • QTI Files OR Affirm student license (EduLastic Platform) 						

Currently not in scope - student-facing curriculum files hosted by district. Great Minds is open to discussions of a separate licensing fee to add this service, however we would require additional information about the format to be able to provide a fee, if any.

Notes: 1) For students in two-way immersion programs, Great Minds will provide both English and Spanish print materials for one price of [redacted] per student. 2) Mid-Module and End of Module Digital Assessment items (used in grades 1-5 only), will be provided in QTI format. 3) Spanish QTI files for Mid- and End of Module Assessments may not be available in SY 19-20, in which case print Assessment packets, collated for each student in packets of 30, will be provided. 3) Print Spanish Student Editions are available at same price as English. 4) Student materials are not available for Pre-K students.

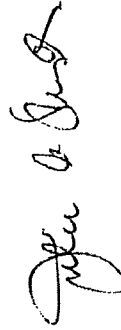
Shipping is included at no additional charge

Professional Development Pricing

School Year:	19-20	20-21	21-22	22-23	23-24	24-25
Estimated number of participants:	1600	5100	4250	tbd	tbd	tbd
Estimated number of Professional Development Days:	165	375	155	20-35	10-15	10-15
Price Per Day:						
Estimated Total Cost Per Year:						

Notes: 1) Maximum number of participants per session is 50. 2) An additional 5 days of planning and implementation guidance for district leaders will be provided yearly at no charge. 3) District Leadership professional development will be provided at no cost. 4) Great Minds will provide a dedicated Implementation Manager to provide additional district support. 5) Teach Eureka on-demand video professional development is included with the Teacher Digital Suite for unlimited self-study.

FIRM NAME: Great Minds LLC
 ADDRESS: 55 M Street S. E., Suite 340 Washington, D.C. 20003
 TELEPHONE NO w/area code: (248) 495-8500
 EMAIL: julie.huston@greatminds.org
 NAME: Julie Huston
 TITLE: Chief Sales Officer



SIGNATURE
 DATE: 12/17/18

Great Minds LLC
PROFESSIONAL DEVELOPMENT SERVICES
TERMS AND CONDITIONS

1. Scope.

1.1. These Professional Development Services Terms and Conditions (these "Terms") contain the standard terms and conditions applicable to customers who purchase services (the "Services") from Great Minds LLC ("GM").

1.2. No terms and conditions of Customer shall at any time form a part of the content of any contract between Customer and GM, unless expressly agreed to in writing by GM even if they are not further expressly rejected by GM.

2. Offer and Acceptance; Scope of Services.

2.1. All Services performed by GM pursuant to a statement of work ("SOW") or contract ("Contract") issued by GM shall be governed by these Terms. Customer shall accept the SOW or Contract and these Terms by signing a copy of the SOW or Contract or by accepting the Services. No SOW or Contract is binding upon GM until it is fully executed by Customer and it is accepted by GM in writing.

2.2. The scope of the Services shall be described in the SOW or Contract. Additionally, each SOW or Contract shall (a) incorporate by reference these Terms and (b) state the other relevant business parameters, including, but not limited to, fees for Services.

3. **Delivery Deadlines.** Time of performance and deadlines shall be agreed upon between Customer and GM and shall be set forth in the SOW or Contract or other documentation specifying the Services to be delivered. Agreed upon delivery times and deadlines shall be based on estimates of the extent of the Services required and according to particulars and information supplied by Customer. Delivery times and deadlines shall be binding only on request by Customer and confirmation in writing by GM. Notwithstanding the foregoing, GM reserves the right to change the date for completion of Services and, if it does so, it will notify Customer.

4. Customer Cooperation.

4.1. Customer agrees that all cooperation required of Customer, Customer's agents, employees or any third party in connection with the Services shall be provided in a timely manner and at no cost to GM.

4.2. All documentation and materials, supplies, auxiliary staff, etc., necessary and reasonably required for the performance of the Services shall be made available to GM free of charge. In cooperating with GM, Customer shall comply with all legal requirements.

4.3. Customer shall bear any additional cost incurred as a result of Services having to be redone or delays resulting from untimely, incorrect or incomplete information or lack of proper cooperation. Notwithstanding that a fixed or maximum price for the Services has been agreed upon between the parties, GM shall be entitled to charge additional fees to offset additional expenses incurred as a result of such lack of proper Customer cooperation.

5. Payment Conditions and Fees.

5.1. Fees for Services shall be set forth in the SOW or the Contract.

5.2. GM will invoice upon completion of the Services with payment expected within in 30 days. Unless otherwise agreed to by the parties in writing, invoices will be issued regularly. Invoices are only payable in the legal tender of the invoice. In case of Services that are rendered under flat-fee arrangements, no detailed statement of services shall be provided. All invoice amounts shall be due for payment without deduction thirty (30) days after issuance of the invoice. A service charge of 1.5% per month or the highest rate permitted by law will be added to those accounts not paid within thirty (30) days of invoice date. If collection procedures are required, Customer will pay for all reasonable expenses including court and attorneys' fees. The accrual or receipt by GM of interest under this subsection shall not constitute a waiver by GM of any right it may have to declare Customer in default under its agreement or to terminate its agreement to perform Services.

5.3. Payments shall be made by check payable to GM unless another method of payment is expressly set forth in a SOW or Contract. Objections to any invoice shall be submitted in writing within two (2) weeks from receipt of the invoice. If Customer cancels all or any portion of a project fewer than thirty (30) days prior to commencement of Services, GM is entitled to a cancellation fee of twenty percent (20%) of the total or prorated contracted price plus payment of out-of-pocket travel expenses that GM is obligated to pay in connection with the cancelled Services that are not refunded to GM. If Customer fails to pay any amount due, GM may, without notice to Customer, suspend all Services.

5.4. Fees for Services rendered hereunder do not include any relevant value added tax ("VAT"), sales, excise or similar taxes, which are payable by Customer, where required.

6. No Right of Set-off.

Customer shall have no right of set-off against any payments due, whether on account of any claims or alleged claims against GM under these Terms or otherwise.

7. Acceptance.

Services shall be deemed to be accepted by Customer upon delivery of the Services.

8. Non-Solicitation.

8.1 For a period of eighteen months (18) months after completion of the Services, Customer shall not, directly or indirectly, either for its own benefit or on behalf of any other person or entity, hire any employee, consultant or independent contractor of GM who provides Services to Customer.

8.2 Customer agrees that if it breaches any portion of this Section 8: (i) GM would suffer irreparable harm; (ii) it would be difficult to determine damages, and money damages alone would be an inadequate remedy for the injuries suffered by GM; and (iii) if GM seeks injunctive relief to enforce this Section 8, Customer shall waive and shall not (a) assert any defense that the GM has an adequate remedy at law with respect to the breach, or (b) require GM to post a bond or any other security. Nothing contained in this Section 8 shall limit GM's right to any other remedies at law or in equity.

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8.3 Notwithstanding the above, if one or more of the provisions contained in the non-solicitation provisions above shall, for any reason, be held to be excessively broad or unreasonable as to time, duration, geographic scope, area, activity, or subject, this Section 8 shall be construed, by limiting and reducing it, so as to be enforceable to the fullest extent compatible with applicable law.

9. Intellectual Property Rights.

In connection with the Services, GM may provide Customer with curriculum and professional development materials, including but not limited to PowerPoint presentations, videos, and Professional development and curriculum materials (the "Works"). GM owns all right, title, and interest, including all associated copyrights, trademarks and other intellectual property rights, in and to the Works (the "IP Rights"). Subject to the license granted herein, GM retains all IP Rights. Customer acknowledges that the license granted herein does not provide Customer, Customer's school, or Customer's school district with title to or ownership of the Works, including the IP Rights. GM grants to Customer, and Customer hereby accepts, a limited, non-exclusive, and non-royalty license to use the Works in connection with the SOW or Contract or for further internal non-commercial training (the "License"), with no right to license or sublicense. Customer may modify the Works only to the extent necessary for internal training (the "Derivative Works"). Derivative Works shall be considered "works made for hire" and owned by GM. Customer assigns and transfers to GM all right, title and interest in and to the Derivative Works, including without limitation any moral rights and any intellectual property rights subsisting therein and agrees to take any other steps necessary to assist GM in perfecting its right to same. Customer represents and warrants that any Derivative Works created are original to Customer and shall not infringe any intellectual property right of any other person or entity, and shall not constitute a libel or defamation, or an invasion of the right of privacy or publicity. Apart from the rights already licensed to Customer herein, Customer shall maintain no rights in and to the Derivative Works. Customer agrees to refrain from distributing the Works and/or the Derivative Works to anyone outside of Customer's school district, including by posting same to any website that can be accessed by persons in other school districts.

10. Warranty and Limitation of Liability.

10.1. GM warrants that the Services shall be performed by GM in a workmanlike manner by qualified personnel. GM shall not be liable under any circumstances to Customer or any other person if (a) the Services or work products prepared in connection with the Services are not used for the intended purpose; (b) if Customer fails to perform its obligations under these Terms; or (c) Customer did not disclose to GM all material facts known to Customer with respect to the purpose of the Services.

10.2. EXCEPT FOR THE WARRANTIES SET FORTH HEREIN, GM MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES BY GM OR ANY OF ITS AGENTS, SUBSIDIARIES, AFFILIATES OR SUBCONTRACTORS. ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DECLINED.

10.3. CUSTOMER MAY NOT BRING ANY ACTION ARISING

OUT OF OR IN CONNECTION WITH ANY TRANSACTION COVERED BY THESE TERMS UNLESS SUCH ACTION IS COMMENCED WITHIN SIX MONTHS AFTER THE CAUSE OF ACTION HAS ACCRUED.

10.4. THE LIABILITY OF GM, ITS EMPLOYEES, AGENTS, MANAGERIAL STAFF AND CONSTITUENT BODIES, FOR ALL DAMAGES IN CONNECTION WITH THE PROVISION OF THE SERVICES SHALL IN ALL EVENTS BE LIMITED TO THE LESSER OF (A) TEN TIMES THE AMOUNT PAID BY CUSTOMER FOR SERVICES RELATED TO A PARTICULAR CONTRACT OR SOW UNDER WHICH THE DAMAGES OCCURRED OR (B) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

THE LIABILITY OF GM HEREUNDER IS EXPRESSLY LIMITED TO DIRECT DAMAGES INCURRED WITH RESPECT TO THE SERVICES PERFORMED BY GM. IN NO EVENT SHALL GM BE LIABLE TO ANY PERSON FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR GOODWILL, OR ADDITIONAL EXPENSES INCURRED, WHETHER PURSUANT TO A CLAIM IN CONTRACT, TORT OR OTHERWISE AND WHETHER IN AN ACTION FOR BREACH OF WARRANTY OR OTHERWISE.

11. Indemnification.

Customer shall indemnify and hold harmless GM and GM's officers, directors, trustees, employees, affiliates, suppliers and agents (each a "GM Indemnified Person") against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments of any kind whatsoever (including all reasonable legal and attorney's fees and expenses) to which a GM Indemnified Person may become subject out of claims by Customer or any third party (including without limitation customers of Customer) related to or arising out of (a) any breach by Customer of any provision of these Terms or the SOW or Contract; (b) any misrepresentation made by Customer in connection with obtaining any Services; or (c) any action or omissions of Customer related to the Services set forth in the SOW or the Contract.

12. Governing Law and Jurisdiction; Place of Performance.

12.1. The construction and validity of these Terms shall be governed by the laws of the state where school district is located, without giving effect to its conflict of laws rules, regardless of where any order was placed or filed, the place of performance of the Services or delivery of reports or where any other act or performance occurred.

12.2. All Services provided by GM shall be deemed to be provided in the State where the school district is located. Customer agrees to the exclusive jurisdiction of the federal and state courts located in the state where the school district is located, with respect to the adjudication of any dispute arising out of or in connection with the provision of the Services, or these Terms.

13. Severability.

If any provision of this Agreement is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms, and the remainder of these Terms shall be

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enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

14. General Conditions.

14.1. GM reserves the right to discontinue any of the Services and to revoke or change prices or terms, except when otherwise indicated in these Terms. If, at any time, it becomes necessary to discontinue Services to Customer, to revoke or modify any provisions of these Terms or of any SOW or Contract, or to allocate the provision of Services, GM will take whatever action which it, in its sole and absolute judgment, deems fair and appropriate.

14.2. Customer acknowledges that video recording and audio recording of Services is strictly prohibited.

15. Revisions; Modifications; Waiver.

15.1. GM may change, revise, amend or modify these Terms from time to time. GM shall provide Customer with written notice of any such changes, revisions, amendments or modifications, provided, however, that any such changes, revisions, amendments or modifications shall become effective without any further action by any party and that they shall not apply to any orders placed and

accepted prior to the effective date of such changes, revisions, amendments or modifications.

15.2. Should GM at any time not enforce any one of these Terms, such event shall not be interpreted as a change of said Terms, or as GM's waiver to exercise any of its rights under these Terms.

16. Independent Contractor. This Agreement is not intended to and does not create in any manner a principal-agent, employer-employee, partnership, joint venture or any other relationship between the Customer and GM. Neither party shall have any right or authority to assume or to create any obligation or responsibility, expressed or implied on behalf of or in the name of the other party or to bind the other party in any manner.

17. Assignment.

Customer may not assign any of Customer's rights or delegate any of Customer's obligations or duties hereunder without the express, written, prior consent of GM. Without limitation, GM may assign any of its rights and/or delegate any of its obligations or duties hereunder, in whole or in part, to an affiliate without Customer's consent.

18. Entire Agreement.

These Terms, together with any SOW or Contract issued, and any schedules attached thereto, (collectively, this "Agreement") shall be the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof and supersede any oral or written communications, understandings, acknowledgements or representations or agreements relating thereto.

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Last Updated: June 22, 2018

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II. HOW GREAT MINDS MAY USE YOUR INFORMATION

Information Provided by You

We may use the information that you provide when you download or use Great Minds' products or services to create your account. This allows you to log in and store your preferences for communications from us and future use of the Great Minds Website and our products and services. You remain in control of the personal information that you provide to us. This means that you can review, revise, or delete your personal information at any time, as described below.

We may use your email address to send you information regarding your Great Minds account or products that you purchase or download. We also may use your email address to send you a newsletter and other communications; you may unsubscribe at any time.

We use your non-personal information, such as your role, and other demographic information in aggregated, anonymized reporting to help us better understand how our curricula, products, and services are used and to improve our curricula, products, and services. We use aggregated, anonymized student data that we collect for the same purposes.

Website Usage Information

We use website usage information to administer the website, monitor and diagnose problems with it, remember you when you return so that you don't have to resubmit your information, and to improve the website and our products and services.

III. HOW GREAT MINDS MAY SHARE YOUR INFORMATION

We never sell or rent your personal information to third parties for any purpose.

We will share your information with third parties only in the following circumstances:

- When we believe in good faith that disclosure of your information is necessary to protect our rights and those of others, to protect your safety or the safety of others, to investigate fraud, to respond to a government, judicial, or other legal request, or otherwise to comply with the law;
- In connection with an organizational change, such as a dissolution, provided that your information will remain subject to the terms of this Privacy Policy; and
- When we hire third parties to perform certain business-related functions for us. For example, we sometimes hire third parties for mailing information, maintaining databases, hosting services, and processing payments. When we employ another company to provide services to support Great Minds, we provide them only with the information that they need to perform their specific function. Our third-party providers are legally obligated to keep your personal information confidential and to use it only for our specific purpose. Our third-party providers also are required to maintain reasonable security practices, to use the information only for the purpose that we prescribe, and to prevent disclosure of the information to unauthorized parties.

We also may share certain aggregated, anonymized information with third-party providers to help us analyze the information to improve our curricula, products, and services.

IV. HOW GREAT MINDS SECURES AND PROTECTS YOUR INFORMATION

We maintain multiple reasonable security measures to safeguard your information and protect it from loss, theft, misuse, or alteration. These measures include encryption, two-factor authentication, regular software security updates, periodic system and risk assessments, prompt remediation of identified security vulnerabilities, and other industry best practices for network and physical security. We don't store any credit card information that you provide; that information is collected and processed by a third party that is PCI compliant.

No data transmissions over the Internet, however, can be guaranteed to be 100% secure. Accordingly, we cannot ensure or warrant the security of any information that you transmit or

otherwise provide to us through the Great Minds Website or digital products or services, and you transmit such information at your own risk.

You will be asked to create a password when you create an account, and this password will be used to allow you to access your account information and certain portions of the Great Minds Website and our products and services. You are responsible for maintaining the strict confidentiality of your account password and for any activity that occurs under your account credentials, whether or not authorized by you. Please notify us of any unauthorized use of your account or any suspected breach of security. We will comply with all applicable laws in the event of an unauthorized disclosure of personal identifying information.

V. HOW TO CHANGE YOUR INFORMATION OR OPT OUT OF COMMUNICATIONS

You may review or change the information that you have provided about yourself by logging into your account or by contacting us at <https://greatminds.org/contact>. If you contact us, we will ask you to verify your identity before we provide you with information or make changes to your account.

You also may choose to opt out of our newsletters and other communications (though we hope you'll stay connected!). To opt out, click on the "unsubscribe" link that appears on Great Minds emails, or contact us at <https://greatminds.org/contact>.

VI. HOW TO DEACTIVATE YOUR ACCOUNT; DATA RETENTION POLICY

You may deactivate your Great Minds account at any time by contacting us at <https://greatminds.org/contact>. Following deactivation of your account, we will retain your account information for a period of six months in case you decide to reactivate your account during that period. You may request deletion of your account information earlier, however, by contacting us at <https://greatminds.org/contact>. During the six months that your account is inactive following deactivation, we will not use or share your personal account information for any purpose.

If you don't reactivate your account during that six-month period, we will anonymize and aggregate your information, meaning that we will remove all personal identifiers such as your first and last name and email address. We retain aggregated, anonymized information for some of the purposes described above.

VII. HOW GREAT MINDS WILL NOTIFY YOU OF CHANGES TO THIS PRIVACY POLICY

We may occasionally update this Privacy Policy; you can see when we last updated this policy by checking the "Last Updated" date at the top of this page. We won't reduce your rights under this Privacy Policy without your express consent. If we make any significant changes, we'll provide prominent notice by posting a notice on the Great Minds Website and/or notifying you by email (using the email address that you provided).

We encourage you to review this Privacy Policy from time to time to stay informed about how we collect, use, and disclose personal information. If you don't agree with any changes to this Privacy Policy, you may deactivate your account, as discussed in Section VI, above. By continuing to use the Great Minds Website, your account, or any Great Minds products or services after revisions to the Privacy Policy have become effective, you accept and agree to the then current version of the Privacy Policy.

VIII. HOW TO CONTACT US

If you have any questions about this Privacy Policy, please contact us:

Great Minds

55 M Street SE, Suite 340

Washington, DC 20003

[HTTPS://GREATMINDS.ORG/CONTACT](https://greatminds.org/contact)

ATTACHMENT B
(MCPS General Contract Articles)

MCPS GENERAL CONTRACT ARTICLES

ARTICLE 1. DESCRIPTION AND GENERAL INTENT

For the purposes of these MCPS General Contract Articles, "MCPS" refers to the Board of Education of Montgomery County, which operates a system of public schools commonly known as Montgomery County Public Schools, and "Contractor" refers to the entity awarded a Contract pursuant to authorization by MCPS in accordance with applicable laws, Board of Education policies, and MCPS regulations. Together MCPS and the Contractor are collectively referred to as the "Parties" and each individually as a "Party." The term "Contract" refers to these MCPS General Contract Articles and any other contract documents duly executed by the Parties that expressly incorporate these MCPS General Contract Articles by reference, as well as any request for proposals (RFP) or solicitation by MCPS, the Contractor's proposal or bid in response, and any Contract award notification issued by MCPS.

ARTICLE 2. MCPS PROJECT CONTACT

The MCPS Project Contact is responsible for the technical and programmatic aspects of the Contract and is the technical and programmatic liaison with the Contractor. The MCPS Project Contact is responsible for the review and approval of any and all deliverables, products, and/or services, and such other responsibilities as may be specified in the Contract. The MCPS Project Contact is not authorized to make any commitments, otherwise obligate MCPS, or make any changes which affect the Contract price, terms, or conditions. Any Contractor requests for changes to the Contract price, terms, or conditions shall be referred to the Director of the MCPS Department of Materials Management or designee (DMM Director). No such changes shall be made without the written authorization of the DMM Director. The MCPS Project Contact may be changed at any time, provided that notification of the change, including the name and address of the successor MCPS Project Contact, is provided to the Contractor in writing. Any written notice by the Contractor to MCPS required under the Contract shall be provided to the DMM Director, with a copy to the MCPS Project Contact, using contact information available on the MCPS website.

ARTICLE 3. INDEPENDENT CONTRACTOR

The Parties agree that the Contractor is an independent contractor under the Contract and will in no way be considered to be an agent, partner, or employee of, or joint venture with, MCPS. Neither the Contractor nor its employees, agents, affiliates, or subcontractors will be entitled to any benefits, coverage, or other privileges made available to MCPS employees.

ARTICLE 4. KEY CONTRACTOR PERSONNEL

Any of the Contractor's key personnel, identified as such in the Contract, are considered to be essential to the work being performed under the Contract. Prior to diverting any such key personnel to other programs, the Contractor shall notify the MCPS Project Contact reasonably well in advance and submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Contract. No diversion shall be made by the Contractor without the written consent of the MCPS Project Contact. Failure to obtain the approval of the MCPS Project Contact as required or to propose replacement personnel acceptable to the MCPS Project Contact may be cause for termination pursuant to Article 13. MCPS reserves the right to require that the Contractor replace any key personnel or any individual charged to the Contract at any point during the Contract term if MCPS determines that this action is in its best interests.

ARTICLE 5. CONTRACTOR RESPONSIBILITY

- A. The Contractor shall furnish all personnel, materials, products, tools, services, and facilities necessary to perform the requirements set forth in the Contract. All deliverables, products, and/or services required by the Contract shall be submitted to the MCPS Project Contact according to the kinds and

dates indicated in the Contract. MCPS has relied upon the professional ability and training of the Contractor as a material inducement to enter into the Contract. The Contractor hereby agrees and warrants that all of the Contractor's work shall be performed in a professional and workmanlike manner, through only qualified and appropriately trained personnel, and consistent with the highest industry standards in compliance with applicable federal, state, and county laws and regulations—it being understood that acceptance of the Contractor's work by MCPS shall not operate as a waiver or release of the Contractor's obligations.

- B. The Contractor acknowledges and agrees that time is of the essence with respect to its obligations under the Contract and that prompt and timely performance of all such obligations, including conformance with all timetables and other requirements of the Contract, is strictly required.
- C. The Contractor shall obtain any licenses or permits necessary for performance of the work required under the Contract. In the event the work to be performed by the Contractor must by law or regulation be provided by individuals who are licensed and/or certified to provide certain Professional Services, the Contractor shall only assign individuals to perform work under the Contract who are licensed and/or certified in accordance with applicable law, and all such individuals shall maintain their license and/or certification in good standing (not under review or subject to suspension) during the entire term of the Contract. "Professional Services" for the purpose of the Contract shall mean any service provided by a licensed, certified, or otherwise documented professional. Upon request by MCPS, the Contractor shall promptly submit documentation to the MCPS Project Contact that the individuals assigned to provide Professional Services under the Contract are properly licensed and/or certified.
- D. Any performance or bid bond obligations of the Contractor will be as described in the RFP or solicitation.
- E. Whenever the Contractor has knowledge that any actual or potential situation (including, but not limited to, labor disputes) delaying or threatening to delay the timely performance of the work under the Contract or a force majeure event as described in Article 7, the Contractor shall immediately give written notice, including all relevant information, to the DMM Director.
- F. The Contractor shall comply with all applicable federal, state, and county laws and regulations, as well as all applicable safety requirements, Board of Education policies, and MCPS regulations issued by the Superintendent of Schools. Board of Education policies and MCPS regulations are available at this link: www.montgomeryschoolsmd.org/departments/policy/. This obligation includes but is not limited to Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency* ("Board Policy ACA"), which prohibits discrimination based on actual or perceived personal characteristics, including race, ethnicity, color, ancestry, national origin, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family/parental status, marital status, age, physical or mental disability, poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations. Consistent with Board Policy ACA and applicable federal, state, and county laws and regulations, the Contractor will not discriminate against any of its employees or applicants for employment because of the actual or perceived personal characteristics listed above. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to these actual or perceived personal characteristics. In addition, the Contractor agrees to provide such accommodations as are required under federal, state, and county laws and regulations, including but not limited to the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973.
- G. The Contractor shall provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and its implementing regulations, Board of Education Policy IGN, *Preventing Alcohol, Tobacco, and other Drug Abuse in Montgomery County Public Schools*, and MCPS Regulation COF-

RA, Alcohol, Tobacco, and other Drugs on Montgomery County Public Schools Property.

- H. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

ARTICLE 6. SUBCONTRACTORS

Work performed under the Contract shall not be subcontracted without advance written approval of the DMM Director; nor shall any substitution of subcontractors be made without such advanced approval in writing. The Contractor shall include provisions in its subcontracts requiring its subcontractors to comply with the Contract, to indemnify, defend, and hold harmless MCPS, and to provide insurance coverage for the benefit of MCPS, in a manner consistent with the Contract. The Contractor also shall cause its employees, agents, affiliates, and subcontractors to comply with the Contract and adopt such review, audit, and inspection procedures as are necessary to assure such compliance.

ARTICLE 7. FORCE MAJEURE

Neither Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic event. Should there be such an occurrence that impacts the ability of either Party to perform its responsibilities under the Contract, the nonperforming Party shall give immediate written notice to the other Party to explain the cause and probable duration of any such nonperformance. If the DMM Director determines that a failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of MCPS to invoke Articles 12 and 13.

ARTICLE 8. PAYMENT TERMS AND CONDITIONS

- A. The Contractor certifies that all information the Contractor has provided or will provide to MCPS is true and correct and can be relied upon by MCPS in awarding, modifying, making payments, or taking any other action with respect to the Contract including resolving disputes. Any false or misleading information is a ground for MCPS to terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy. The Contractor certifies that the Contractor's accounting system conforms to generally accepted accounting principles, is sufficient to comply with the Contract's obligations, and produces reliable financial information.
- B. The prices, rates and other compensation for work performed is as described in the Contract.
- C. The Contractor's invoices shall be approved for payment by the MCPS Project Contact only after the MCPS Project Contact is satisfied that the Contractor is performing the work and has prepared the invoice as required by the Contract. Prior to approving any Contractor invoices for payment, MCPS, through any authorized representative, has the right at all reasonable times to inspect, or otherwise evaluate, the work performed or being performed at the premises on which it is being performed. If any inspection or evaluation is made by MCPS on the premises of the Contractor or any of its subcontractors, the Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of MCPS representatives in the performance of their duties. All inspections and evaluations shall be performed so that they will not unduly delay the work.
- D. Within thirty (30) days after receipt of each invoice and accepting the work, MCPS shall, except as provided in the Contract, pay for the work performed when approved by the MCPS Project Contact. A payment schedule will be jointly developed between MCPS and the Contractor.
- E. Regardless of any other provisions of the Contract, failure of the Contractor to submit required reports when due or failure to perform or deliver acceptable work, deliverables, products, or services will result

in MCPS withholding payments under the Contract unless such failure arises pursuant to Article 7 and without the fault or negligence of the Contractor. MCPS shall promptly notify the Contractor of its intention to withhold payment of any invoice submitted.

- F. MCPS is tax exempt as a governmental entity. The Contractor shall be responsible for all federal and/or state tax, and Social Security liability that may result from the performance of and compensation for its work. MCPS assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of the Contractor, its employees, agents, affiliates, and/or subcontractors by reason of the Contract.
- G. If at any time MCPS determines that a cost for which payment has been made is a disallowed cost, such as overpayment, MCPS shall notify the Contractor in writing of the disallowance or claim for unallowable costs. MCPS shall also state the means of correction, which may be, but shall not be limited to, adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

ARTICLE 9. CHANGES

The DMM Director may, at any time, make non-material changes that are within the original general scope of the Contract and the RFP or solicitation in any one or more of the following: (i) specifications or statement of work, and (ii) place of performance or delivery. If any such changes cause an increase or decrease in the cost of or the time required for the performance of the Contract, whether changed or not changed by any such order, an equitable adjustment shall be made: (i) in the Contract price or time of performance or both; and/or (ii) in such other provisions of the Contract as may be so affected; and the Contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Article must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change, however, if the DMM Director decides that the facts justify such action, the DMM Director may receive and act upon any such claim asserted at any time prior to final payment under the Contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of Article 15.

ARTICLE 10. AUDIT AND DOCUMENT RETENTION

During the term and for three (3) years thereafter, the Contractor shall: (i) maintain complete and accurate books and records regarding its business operations relevant to the calculation of amounts payable under the Contract and any other information relevant to the Contractor's compliance with the terms and conditions of the Contract; and (ii) upon MCPS' request, make such books and records, as well as any of its employees, agents, affiliates, or subcontractors who might reasonably have information related to such records, available during normal business hours for inspection and audit by MCPS or its authorized representative, provided that MCPS shall: (a) provide the Contractor with reasonable prior notice of any audit; (b) undertake an audit no more than once per calendar year, except for good cause shown; and (c) conduct or cause to be conducted such audit in a manner designed to minimize disruption of the Contractor's normal business operations.

ARTICLE 11. TERM OF CONTRACT

Unless otherwise specified in the Contract, the term of Contract shall be for one year, provided that the Contract is not terminated pursuant to Article 12, 13, or 14. After the initial term, MCPS, in its sole discretion, reserves the right to extend the Contract if agreed to by both Parties.

ARTICLE 12. TERMINATION FOR CONVENIENCE

The Contract may be terminated in whole or in part by MCPS whenever the Superintendent of Schools, or an authorized designee, determines that such a termination is in MCPS' best interest. Any such termination shall be effected by delivery of a notice of termination to the Contractor, at least ten (10) business days prior to the

termination date. The notice of termination shall specify the extent to which performance shall be terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive just and equitable compensation for any work completed, as determined by MCPS, but no amount shall be allowed for anticipated profit on unperformed work. In the event of such termination, all finished and unfinished deliverables, documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall become the property of MCPS.

ARTICLE 13. TERMINATION FOR CAUSE

A. Termination for Cause by MCPS

1. If, through any cause (other than as set forth in Article 7), the Contractor fails to fulfill in a timely manner its obligations under the Contract, or if the Contractor violates any of the covenants, agreements or stipulations of a Contract (hereinafter a "Default"), MCPS shall have the right to terminate the Contract, in addition to MCPS' remedies in the Contract and all other rights available at law or in equity. Such termination shall be effected by MCPS delivering a written notice of termination to the Contractor, which notice may, in the sole discretion of MCPS, provide for a period of up to thirty (30) days for the Contractor to cure the Default. If MCPS provides for an opportunity to cure the Default and the Default is not remediated within the specified period, as determined by MCPS, MCPS shall issue a final notice of termination specifying the effective date of such termination.
2. A Contractor bankruptcy or bankruptcy event shall be deemed grounds for a termination for cause.
3. In the event of such termination for cause, all finished and unfinished deliverables, documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall become the property of MCPS.
4. A termination for cause is a termination for convenience if the termination for cause is later found to be without justification.
5. The Contractor shall be entitled to receive just and equitable compensation for any work completed prior to termination, as determined by MCPS, but no amount shall be allowed for anticipated profit on unperformed work.
6. Notwithstanding the foregoing provisions, the Contractor shall not be relieved of liability to MCPS for damages sustained by MCPS by virtue of any breach of Contract by the Contractor for the purposes of set off, until the exact amount of said damages is ascertained.

B. Termination for Cause by the Contractor

1. If, through any cause (other than as set forth in Article 7), MCPS is in breach of the Contract and has not cured such breach within thirty (30) days of written notice from the Contractor specifying the same, the Contractor shall have the right to immediately terminate the Contract. Such termination shall be effected by delivering a notice of termination to the DMM Director specifying the effective date of such termination.

ARTICLE 14. NON-APPROPRIATION

If the term of the Contract, or any Contract extension, extends beyond the end of the MCPS fiscal year (July 1 to June 30) in which the Contract was awarded or extended, and the approved MCPS budget for the subsequent fiscal year does not appropriate sufficient funds that may be utilized for the Contract, the Contract shall no longer be in force and effect upon the expiration of the current fiscal year funding. In this event, upon expiration of the

current fiscal year funding, MCPS shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other consideration under the Contract, and the Contractor shall not be obligated to perform any further work under the Contract. If the approved MCPS budget for the subsequent fiscal year reduces funding available for the Contract, MCPS shall have the option, in its sole discretion, to cancel the Contract with no liability occurring to MCPS, or offer a Contract amendment to the Contractor reflecting the reduced amount, which the Contractor may accept in lieu of termination.

ARTICLE 15. DISPUTES

The Parties shall collaborate to resolve any disputes arising under the Contract. In the event that the Parties are not able to resolve a dispute concerning a question of fact arising under the Contract, the dispute shall be submitted in writing to the DMM Director for a determination. The Contractor may appeal the decision of the DMM Director in writing to the Superintendent of Schools, whose decision shall be final. This Article does not preclude consideration of questions of law arising under the Contract, provided that nothing in the Contract shall be construed as making final the decision of any MCPS official, representative, or the Board of Education on a question of law. The Parties specifically agree that no dispute or cause of action arising out of the Contract shall be submitted to arbitration or mediation, and the Parties waive any right to a jury trial in any court of competent jurisdiction.

ARTICLE 16. CONTRACTOR INTEGRITY, ETHICS, AND CONFLICTS OF INTEREST

- A. The Contractor is prohibited from using the services of MCPS employees or officials (including Board of Education members) in performing the Contract. Former employees or officials may be used, provided that a 12-month period has elapsed since their last employment at MCPS. A former MCPS employee or official, may not assist or represent the Contractor for compensation in any case, controversy, dispute, contract, or other specific matter involving MCPS, if that case, controversy, dispute, contract, or other specific matter is one in which the former employee or official significantly participated as an employee or official.
- B. No official or employee of Maryland, Montgomery County, or MCPS shall benefit from or receive any money as a result of the Contract. This prohibition does not apply to contracts with MCPS employees or officials who contracted in their own name.
- C. The Contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, partners, employees, agents, affiliates, or subcontractors directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, and county laws and regulations.
- D. The Contractor agrees to review and at all times abide by the Board of Education Policy BBB, *Ethics* ("Board Policy BBB"). In addition, the Contractor shall have an affirmative obligation to disclose in writing to the DMM Director any actual or potential conflicts of interest as identified in Board Policy BBB, and neither the Contractor nor any of its officers, directors, partners, employees, agents, affiliates, or subcontractors shall take any action that they know or should have reason to know would result in any MCPS official or employee violating Board Policy BBB.
- E. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- F. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

ARTICLE 17. PUBLICATION AND PUBLICITY

The Contractor shall not, without consultation and consent by MCPS, (i) originate any report, publication, presentation, publicity, news release, or other announcement, written or oral, relating to the Contract or any results achieved pursuant to the Contract (hereinafter "Publication"); or (ii) use any names, trademarks, or logos of MCPS, except as necessary to perform the work of the Contract. To the extent that MCPS agrees to any such Publication regarding the Contract, the Contractor shall abide by the following terms:

- A. The primary purpose shall be to disseminate information about the work rather than to promote the Contractor's accomplishments or knowledge.
- B. Such Publication shall prominently display or acknowledge MCPS support and include the following disclaimers: (i) the contents of this publication do not necessarily reflect the views or policies of MCPS; and (ii) the mention of trade names, commercial products, or organizations does not imply endorsement by MCPS.
- C. The Contractor shall abide by the provisions of Article 18 and any other data-sharing agreement between the Parties.

ARTICLE 18. DATA COLLECTION AND CONFIDENTIAL INFORMATION

- A. The Contractor shall comply with all federal, state, and county laws and regulations applicable to the Contract regarding data collection, privacy, and security, including but not limited to the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations (34 C.F.R. part 99), the Children's Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501-6505, and its implementing regulations (16 C.F.R. § 312, et seq.), the Protection of Pupil Rights Amendment, (PPRA) 20 U.S.C. § 1232(h) and its implementing regulations (34 C.F.R. § 98.1 et seq.), the Maryland Student Privacy Act of 2015, Md. Ed. Code Ann., §4-131, Code of Maryland Regulations (COMAR) 13A.08, as well as applicable Board of Education policies and MCPS regulations, including but not limited to MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*, MCPS Regulation JOA-RA, *Student Records*, and MCPS Regulation JFF-RA, *Federal Requirements for Use of Protected Student Information*.
- B. Questionnaires, survey instruments, or any other form of data collection from MCPS students, staff, parents/guardians or others pursuant to the Contract or otherwise must be reviewed and approved by the MCPS Office of Shared Accountability prior to use as required by MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*.
- C. Access to Confidential Information
 1. To assist the Contractor in its work under the Contract, MCPS may disclose to the Contractor, either in writing or orally, records or information which MCPS deems to be proprietary and/or confidential (hereinafter, "Confidential Information"). For purposes of the Contract, Confidential Information is any information or data labeled or identified as confidential in the Contract or at the time of disclosure. This definition and the obligations of this Article shall not extend to any information that: (i) the Contractor possesses prior to acquiring it from MCPS; (ii) becomes available to the public or trade through no violation by the Contractor; or (iii) is developed by the Contractor independently of and without reliance on confidential or proprietary information provided by MCPS.
 2. Confidential Information also includes any and all "Personally Identifiable Information" regarding MCPS students, parents/guardians, employees, or others in any medium, including but not limited to any user-generated content that MCPS students, parents/guardians, employees, or others ("MCPS

Users”) input to access or use the Contractor’s deliverables, products, and/or services (e.g., log-in information or responses to assessment questions), as well as “Metadata.” Metadata includes but is not limited to: information about how long a MCPS User took to perform a task; information about how long a MCPS User’s mouse hovered over an item; keystroke data; or other data about the MCPS User’s use of the Contractor’s deliverables, products, and/or services that has not been stripped of all direct and indirect identifiers. With respect to MCPS students, Personally Identifiable Information, as defined under applicable law, includes:

- a. A student’s name;
 - b. The name of the student’s parent/guardian or other family members;
 - c. The address of the student or student’s family;
 - d. A personal identifier, such as the student’s social security number, student number, or biometric record;
 - e. Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
 - f. Other information (including but not limited to Metadata) that, alone or in combination, is linked or linkable to a specific student or family that would allow a reasonable person in the MCPS community, who does not have personal knowledge of the relevant circumstances, to identify the student or family with reasonable certainty; or
 - g. Information requested by a person, who is not an authorized representative of the educational agency and who MCPS and/or the Contractor reasonably believes knows the identity of the student to whom the education record relates.
3. Confidential Information shall be maintained in confidence during the Contract and thereafter, except to the extent that it is required to be either disclosed or protected from disclosure by law, regulation or judicial or administrative process. The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall protect the Confidential Information from any Data Security Breach (as defined below), loss, theft, or disclosure using a commercially reasonable care commensurate with the sensitivity of the Confidential Information that in no circumstances is less than the degree of care that the Contractor uses to protect its own confidential information. The Contractor agrees to assist MCPS in maintaining the privacy of Confidential Information as may be required by all federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above.
 4. The Contractor shall not permit unauthorized access to the Confidential Information to any individual or entity at any time or provide Confidential Information to any person, party, or organization ineligible or prohibited from receiving such information pursuant to any federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above.
 5. In the event that the Contractor is required by law, regulation, or judicial or administrative process to disclose any Confidential Information, the Contractor will promptly notify MCPS in writing, if permitted by law, prior to making any such disclosure in order to facilitate MCPS’ seeking of a protective order or other appropriate remedy from the appropriate body. Should the proprietary or confidential status of any such information be disputed, the Parties agree to work in good faith to reach a mutually satisfactory disposition.

6. To the extent that Confidential Information includes Personally Identifiable Information regarding MCPS Users, MCPS may require additional data sharing protocols, as agreed in writing by the Parties, prior to its disclosure to the Contractor. The Contractor also agrees to comply with the re-disclosure limitations set forth in FERPA, including in 34 C.F.R. § 99.33, and shall not authorize access to Confidential Information that includes Personally Identifiable Information to any of its employees, agents, affiliates, and subcontractors, or to any auditor, unless such employee, agent, affiliate, subcontractor, or auditor (i) requires such access in order to allow the Contractor to provide the deliverables, products, and/or services set forth in the Contract or to fulfill the Contractor's obligations under the Contract; and (ii) has signed a non-disclosure agreement no less restrictive than the terms of the Contract that will (a) prohibit the such individual or entity from using any Confidential Information for any purpose other than providing the contracted service to, or on behalf of the Contractor; (b) prohibit the individual or entity from disclosing any Confidential Information provided by the Contractor to third parties; (c) require the individual or entity to implement and maintain strict security procedures and practices that, at a minimum, comply with industry standards for data security; and (d) require the individual or entity to promptly notify the Contractor if the individual or entity becomes aware of any unlawful access to any Confidential Information stored on its equipment or facilities resulting in loss, disclosure, or alteration of Confidential Information. Such non-disclosure agreements shall be made available for inspection, upon demand, to MCPS. The Contractor agrees to remind (in writing) individuals or entities who cease working with the Contractor of their non-disclosure obligations at the time of departure, and to terminate the network access of such individuals or entities at the time of separation.
7. Notwithstanding any other provision of the Contract, MCPS and/or MCPS Users, as appropriate, retain all right, title, and interest in and to the Confidential Information provided by MCPS and/or MCPS Users. Neither the Contractor, nor any successor or entity to which the Contractor's assets are sold, acquires rights in the Confidential Information, other than the rights MCPS grants to the Contractor to perform the work contemplated in the Contract. If the Contractor becomes subject to dissolution or insolvency, MCPS' and MCPS Users' Confidential Information will not be considered an asset or property of the Contractor. MCPS reserves the right to demand the prompt return of any Confidential Information at any time and for any reason whatsoever. The disclosure of Confidential Information to the Contractor shall not be construed as a grant of any right or license with respect to the information other than for the purposes set forth in the Contract.

D. Use of Confidential Information

1. The Contractor shall collect, use, and store only such Confidential Information that is necessary in connection with the Contractor's obligations under the Contract.
2. The Contractor may collect and use aggregated de-identified Confidential Information for the Contractor's lawful quality assurance and for no other purpose; provided, however, that all direct and indirect personal identifiers are permanently removed and there is no reasonable basis to believe that the remaining information in the records can be used to successfully link the de-identified information to an identifiable individual or to MCPS. Furthermore, the Contractor agrees not to: (i) attempt to re-identify de-identified Confidential Information; and/or (ii) transfer de-identified Confidential Information to any party unless that party agrees not to attempt to re-identify the de-identified Confidential Information and unless MCPS has provided written express consent of the transfer.
3. Neither the Contractor nor any of its employees, agents, affiliates, and subcontractors shall: (i) engage in targeted advertising to MCPS Users; (ii) engage in targeted advertising when the targeting of the advertising is based on Confidential Information; (iii) use Confidential Information to amass a profile about a MCPS User, except in connection with the Contractor's performance of its obligations under the Contract; (iv) sell Confidential Information; or (v) share with any individual

or entity outside MCPS, without prior review and approval from MCPS, any report, data, or research findings that are based on Confidential Information or the use by MCPS or MCPS Users of the Contractor's deliverables, products and/or services and that could be linked to an identifiable MCPS User, stakeholder, school, or the district.

4. To the extent that the Contract requires the Contractor to provide online or mobile services to MCPS that involve the collection, maintaining, or use of Confidential Information that includes Personally Identifiable Information regarding MCPS students, the Contractor warrants that it has signed-on to the *K-12 School Service Provider Pledge to Safeguard Student Privacy* (the "Student Privacy Pledge," available at www.studentprivacypledge.org) and agrees to manage such Confidential Information in a manner consistent with the Student Privacy Pledge; provided, however, that if any statement of the Student Privacy Pledge is inconsistent with the requirements set forth herein, these MCPS General Contract Articles shall govern.
5. The Contractor acknowledges that there are no user agreements (whether electronic, click-through, verbal or in writing) in existence or contemplated between the Contractor and any MCPS Users in connection with their access and use of the Contractor's deliverables, products, or services, and this Contract shall supersede any user agreements that may be adopted during the term of the Contract.

E. Security of Confidential Information

1. The Contractor shall implement and maintain a comprehensive data-security program in accordance with commercial best practices for the protection of Confidential Information, whether the Confidential Information is stored electronically and/or in hard copy. Such data-security program shall include, but is not limited to, the following:
 - a. Security policies for the Contractor's employees, agents, affiliates, and subcontractors related to the storage, access, retention, transportation, and disposition of data containing Confidential Information;
 - b. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
 - c. Secure access controls to Confidential Information, including but not limited to passwords;
 - d. Procedures for data recovery, incident response and processes, and business continuity processes and procedures;
 - e. Encryption of Confidential Information in accordance with industry standard encryption when it is stored or transmitted electronically;
 - f. Protocols for regular backups that include retention of backup copies for such period of time as may be required by MCPS, or by federal, state, and county laws and regulations;
 - g. Audit logs of its system on a secured server with restricted access to prevent tampering or altering of audit data; and
 - h. A process for reviewing policies, procedures, and security measures, as well as training on security policies for employees who have access to Confidential Information, at least annually.
2. The Contractor certifies that it has implemented policies, procedures, and security measures to protect against reasonably foreseeable unauthorized access to, or disclosure of, Confidential Information, and to prevent other reasonably foreseeable events that may result in substantial harm

to MCPS. In addition, the Contractor shall not maintain or store Confidential Information outside of the United States. To the extent that the Contractor uses cloud computing services, all Confidential Information provided by MCPS or MCPS Users shall be securely stored with a commercially reasonable third-party vendor using physical servers located solely within the United States and subject to network security measures consistent with industry standards. The Contractor will confirm to MCPS that the third-party vendor agrees to the non-disclosure agreement terms described in Article 18.C.6.

3. Access to the Contractor's server(s) hosting Confidential Information shall be limited to the Contractor's operations employees, agents, affiliates, or subcontractors who: (i) have access to Contractor's access keys and are specifically trained to manage and secure data; and/or (ii) are involved in providing the Contractor's deliverables, products and/or services.
 4. Any computer, server, or database on which Confidential Information, or any analysis conducted pursuant to the Contract, is maintained shall have anti-virus, configuration control, monitoring/alerting, automated backups, and regular vulnerability testing. Such computer, server, or databases shall be password protected and securely stored at all times with proper authentication and authorization procedures and with access limited to the Contractor's operations personnel and personnel directly involved in implementing the Contract. The Contractor shall not permit Confidential Information to be maintained or stored on any portable memory device, such as thumb drives or portable hard drives, without the express written consent of MCPS.
 5. The Contractor will regularly backup or cause to be backed up all Confidential Information under its control and will securely store and retain backups for such period of time as may be required by federal or state law or regulation, or by MCPS. The Contractor will remove Confidential Information from backups in a manner consistent with technology best practices and industry standards for secure data disposal methods. If the Contractor is required to restore any materials from its backups, it will purge all personally identifiable Confidential Information not currently in use in the production systems from the restored backups.
- F. MCPS reserves the right in its sole discretion to perform audits of the Contractor at its sole expense to ensure compliance with this Article. The Contractor shall reasonably cooperate in the performance of such audits. The Contractor also will conduct regular internal monitoring and vulnerability assessments of the computers, computing environment, servers, and physical data centers that the Contractor uses to collect, process, maintain, or store MCPS' Confidential Information that includes Personally Identifiable Information regarding MCPS Users, and to hire a third party to conduct no less than annual security audits, which includes penetration testing. The Contractor shall review audit findings and will implement recommended security program changes and enhancements where practical and appropriate. The Contractor will provide MCPS, upon request, summary data of the above audits, scans, and tests. The Contractor will take reasonable measures, including maintaining audit trails, to protect Confidential Information against deterioration or degradation of data quality and authenticity.
- G. Data Security Breach
1. A "Data Security Breach" is any instance in which the Contractor has actual knowledge or a reasonable basis on which to suspect or conclude that there has been an unauthorized release or access of Confidential Information, regardless of whether the Contractor stores and manages data directly or through a contractor such as a third-party cloud computing vendor. A Data Security Breach may take various forms, including but not limited to: hackers gaining access to data through a malicious attack; lost, stolen, or temporarily misplaced data or equipment (e.g., mobile computing devices or portable memory devices); employee negligence (e.g., leaving a password list in a publicly-accessible location, technical staff misconfiguring a security service or device); or policy and/or system failure.

2. The Contractor shall notify the MCPS Project Contact immediately of any Data Security Breach, and inform MCPS (to the extent known) what data has been compromised, but in no event later than twenty-four (24) hours after the Contractor learns of the Data Security Breach. If the Contractor becomes aware of a Data Security Breach, it shall cooperate with MCPS regarding recovery, remediation, and the necessity to involve law enforcement, if any. The Contractor shall be responsible for performing an analysis to determine the cause of the Data Security Breach, and for producing a remediation plan in consultation with MCPS. MCPS and the Contractor agree to work together to determine an appropriate notification plan to any MCPS Users of the Contractor's deliverables, products and/or services regarding any such Data Security Breach. In addition, to the extent not prohibited, the Contractor agrees to notify MCPS of Data Security Breaches that affect its customers generally.
 3. In addition to any other remedies available to MCPS, at law or in equity, the Contractor will reimburse MCPS in full for all costs incurred by MCPS in investigating and remediating any Data Security Breach caused in whole or in part by the Contractor or its employees, agents, affiliates, or subcontractors. The Contractor shall use commercially reasonable efforts to mitigate any negative consequences caused to MCPS, or to a MCPS User, as the result of a Data Security Breach and to implement procedures to prevent the recurrence of a similar Data Security Breach.
 4. The Contractor shall provide notice to MCPS within twenty-four (24) hours of notice or service on the Contractor, whichever occurs first, of any lawsuits resulting from, or government investigations of, the Contractor's handling of Confidential Information, failure to follow security requirements, and/or failure to safeguard confidential information of any third party.
- H. Except as specifically set forth by MCPS in writing, or as required by federal, state, and county laws and regulations, the Contractor shall upon the termination or expiration of the Contract, upon cessation or dissolution of the Contractor's business operations, or upon request by MCPS:
1. Erase, destroy, permanently delete, and render unreadable all Confidential Information in its paper files, computers, computing environment, systems, equipment, servers, and physical data centers; or, upon MCPS' request to ensure the integrity of MCPS operations, transfer/migrate such Confidential Information to MCPS or its designated third party;
 2. Certify in writing that the actions set forth in this subsection have been completed on or before agreed-upon deadlines;
 3. Ensure that any transfer/migration uses facilities and methods that are compatible with the relevant systems of MCPS or its designated third party; and
 4. To the extent technologically possible, ensure that MCPS will have access to the Confidential Information during any transfer/migration.
- I. Nothing in this Article shall supersede in any manner the Contractor's obligations or the obligations of its employees, agents, affiliates, or subcontractors pursuant to all federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above, or the provisions of the Contract concerning the Contractor's obligations to MCPS.
- J. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy. Notwithstanding anything in the Contract to the contrary, the provisions of this Article shall survive the expiration or earlier termination of the Contract.

ARTICLE 19. DOCUMENTATION AND COPYRIGHT

- A. The Contractor warrants that any deliverables, products, and/or services provided by the Contractor to MCPS through the Contract, as delivered by the Contractor for MCPS' normal use, will not infringe any valid patents or copyrights existing at the time the deliverables, products, and/or services are made available to MCPS, provided however, that this warranty does not extend to any infringement arising out of the use of such deliverables, products, and/or services in combination with other systems, equipment, or platforms not supplied by the Contractor. Notwithstanding the foregoing, collected data, analyses, and any analytical processes, programs, files, reports, and other deliverables developed as a contractual requirement are the sole property of MCPS. MCPS may waive title to any portion or to all data and analyses. MCPS has the sole right to copyright any deliverable or product developed for MCPS purposes under the Contract and may license its use by others for a fee or without charge.
- B. The Contractor agrees that it shall not assert any ownership rights, property rights, or copyright to MCPS student work product, as defined in Md. Code Ann., Education § 4-130.

ARTICLE 20. MCPS PROPERTY

The use of MCPS property, including but not limited to equipment and technology, must be approved in advance by the DMM Director. If the DMM Director has agreed to the Contractor's use of MCPS property, the following provisions shall apply:

- A. The Contractor shall insure all MCPS property in its possession or control and shall be liable to MCPS for the fair market value of any damage or loss to MCPS property, aside from that incurred by normal wear and tear. The Contractor shall maintain the property in operating condition, with the cost being chargeable to the Contract.
- B. All MCPS property shall be returned promptly upon completion of the Contract or otherwise disposed of, as directed in writing by MCPS. All costs of shipment or disposal are a Contract cost.
- C. Unless stated otherwise in writing, MCPS property may be used only for the performance of the Contract.
- D. Title to all MCPS property shall remain in the hands of MCPS at all times. Title to the property acquired by the Contractor for use under the Contract shall vest in MCPS upon delivery to the Contractor. Title to property leased with a purchase option shall pass to MCPS even if the option date is later than the Contract period. Any payments required to acquire title are a Contract cost.

ARTICLE 21. OBLIGATIONS REGARDING CRIMINAL RECORDS OF INDIVIDUALS ASSIGNED TO WORK IN MCPS FACILITIES

- A. **Prohibition against assigning registered sex offenders and individuals convicted of sexual offenses, child sexual abuse, and other crimes of violence to MCPS contracts:**
 - 1. Maryland Law requires that any person who enters into a contract with a county board of education "may not knowingly employ an individual to work at a school" if the individual is a registered sex offender. Under § 11-722 of the Criminal Procedure Article of the Maryland Code, an employer who violates this requirement is guilty of a misdemeanor and, if convicted, may be subject to up to five (5) years imprisonment and/or a \$5,000 fine.
 - 2. Maryland Law further requires that a contractor or subcontractor for a local school system may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo

contendere to, a crime involving:

- a. A sexual offense in the third or fourth degree under § 3-307 or § 3-308 of the Criminal Law Article of the Maryland Code or an offense under the laws of another state that would constitute an offense under § 3-307 or § 3-308 of the Criminal Law Article if committed in Maryland;
 - b. Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in Maryland; or
 - c. A crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in Maryland, including: (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offense in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) child abuse in the first degree; (16) sexual abuse of a minor; (17) an attempt to commit any of the crimes described in items (1) through (16) of this list; (18) continuing course of conduct with a child under § 3-315 of the Criminal Law Article; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.
3. The Contractor is required to submit, following award of the Contract, documentation confirming that its direct employees and those of any subcontractors and/or independent contractors assigned to perform work in a MCPS school facility under the Contract meet this obligation. Additionally, the Contractor must confirm that it continues to meet this obligation on an annual basis and/or when there are changes in its workforce that the Contractor and/or its subcontractors use to perform the work required by the Contract.

B. Required criminal background check process for certain individuals in the Contractor's workforce:

1. Under § 5-551 of the Family Law Article of the Maryland Code, each contractor and subcontractor shall require that any individuals in its workforce must undergo a criminal background check, including fingerprinting, if the individuals will work in a MCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children. The term "workforce" in this and the preceding section refers to all of the Contractor's direct employees, subcontractors and their employees, and/or independent contractors and their employees that the Contractor uses to perform the work required by the Contract.
2. Fingerprinting for the criminal background check may be performed by the MCPS Office of Human Resources and Development, 45 W. Gude Drive, Rockville, MD 20850, or through another service approved by MCPS. Individuals fingerprinted by MCPS will be required to provide written consent, and MCPS will maintain copies of all records for criminal background checks performed by MCPS. If the Contractor uses another service approved by MCPS, the results of the criminal background check must be provided to MCPS for record keeping. A list of MCPS approved fingerprinting agencies is available at www.montgomeryschoolsmd.org/departments/procurement.
3. The Contractor must take appropriate steps to promptly follow up on information identified in the criminal background check related to any sexual offenses, child sexual abuse offenses, and crimes of violence enumerated above, as well as any information regarding offenses involving distribution of drugs or other controlled substances, or any other criminal information identified by MCPS as

warranting further explanation insofar as it may significantly affect the safety and security of MCPS students. If, after following up, the Contractor believes that the individual is qualified and should be assigned to work (or continue to work) in a MCPS school facility, then the Contractor will provide a written summary to MCPS justifying its recommendation. MCPS will rely on the Contractor's summary to determine whether to accept the Contractor's recommendation, and the Contractor will be responsible for any consequences of a material misrepresentation in its written summary.

4. Once the Contract is awarded, the Contractor is responsible for implementing the background check process. An individual in the Contractor's workforce may not begin work in a MCPS school facility on an assignment where the individual will have direct, unsupervised, and uncontrolled access to children, until: (i) the background check results for that individual have been received by MCPS; (ii) the Contractor certifies to MCPS that the individual has completed the online training regarding recognizing, reporting, and preventing child abuse and neglect, available on the MCPS website at: www.montgomeryschoolsmd.org/childabuseandneglect/; and (iii) the individual obtains a MCPS identification badge. The badge will be issued by the MCPS Department of Safety and Security, 850 Hungerford Drive, Room 131, Rockville, MD 20850. Appointments are made by calling 301-279-3066. The Contractor will be required to return all badges at the conclusion of the Contract.
 5. The criminal background check and badging process will be at the Contractor's expense.
- C. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

ARTICLE 22. INDEMNIFICATION AND LIABILITY

- A. The Contractor is responsible for any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including attorney's fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Contractor's negligence, its performance or failure to perform any of its obligations under the Contract, or its violation of any applicable legal requirement. For purposes of this Article, the negligence of employees, agents, affiliates, or subcontractors of the Contractor is deemed to be the negligence of the Contractor. In addition, the Contractor must defend, indemnify, and hold MCPS harmless from and against: (i) any claim (including but not limited to an enforcement action by any federal, state, or local agency) arising from or related to any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including but not limited to attorney's fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Contractor's negligence, its performance or failure to perform any of its obligations under the Contract, or its violation of any applicable legal requirement; (ii) any claims, costs, and/or losses whatsoever occurring or resulting from: (a) the Contractor's failure to pay any such compensation, wages, benefits, or taxes; and/or (b) the supplying to the Contractor of work, services, materials, or supplies in connection with or in support of the performance of the Contract; and (iii) any claim of infringement or misappropriation of any patent, copyright or other intellectual property right.
- B. In the event of any intellectual property infringement or misappropriation claim, or if the Contractor becomes aware of the possibility of such a claim, the Contractor may, in its discretion, within sixty (60) days: (a) furnish MCPS with non-infringing replacement of its deliverables, products, and/or services which are functionally equivalent in all material respects to MCPS' satisfaction; (b) modify the applicable deliverables, products, and/or services so that they become non-infringing but functionally equivalent in all material respects to MCPS' satisfaction; (c) obtain for MCPS the right to use such deliverables, products, and/or services upon commercially reasonable terms, subject to adjusted payment obligations on the part of MCPS if such terms differ from those set forth in the Contract; or (d) if and only if (a) – (c) are commercially impracticable, terminate the Contract in whole or in part and

refund to MCPS the fees received for such deliverables, products, and/or services that are the subject of such a claim.

- C. In any action or proceeding brought against MCPS by reason of the foregoing, the Contractor must reimburse MCPS the cost of defending such action or proceedings, or upon MCPS' written demand and at the Contractor's sole cost and expense, the Contractor must defend such action and proceeding by counsel approved by MCPS.
- D. For the purposes of this Article, MCPS includes the Board of Education of Montgomery County, and its officers, officials, agents, and employees. Nothing herein or any other provision of the Contract shall be construed to abrogate, impair, or waive any defense, liability or damages limitation, or governmental immunity of MCPS pursuant to Maryland law, or otherwise. In addition, nothing herein or any other provision of the Contract shall be construed to require MCPS to defend, hold harmless, indemnify, or pay any expenses (including but not limited to attorney's fees and litigation expenses) to the Contractor. The Contractor expressly understands and agrees that any performance bond or insurance protection required by the Contract, or otherwise provided by the Contractor, shall in no way limit its responsibility under the Contract to defend, indemnify, and hold harmless MCPS.
- E. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, THE CONTRACTOR'S DELIVERABLES, PRODUCTS, SERVICES, AND/OR OTHER ITEMS PROVIDED HEREUNDER; HOWEVER, THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY TO THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE. NO OTHER DISCLAIMER OR LIMITATION OF LIABILITY SHALL BE APPLICABLE TO THE DELIVERABLES, PRODUCTS, AND/OR SERVICES, OR WORK PROVIDED BY THE CONTRACTOR UNDER THE CONTRACT.
- F. Notwithstanding anything in the Contract to the contrary, this Article shall survive the expiration or earlier termination of the Contract.

ARTICLE 23. INSURANCE

- A. The Contractor shall be solely responsible for any insurance, including, but not limited to, general comprehensive liability, worker's compensation, professional liability insurance, and business automobile insurance. The Contractor agrees to provide MCPS with certificates of insurance verifying the following minimum coverage:
 - 1. Comprehensive General Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for claims arising out of bodily injuries or death, and property damages, subject to a minimum limit of Three Million Dollars (\$3,000,000.00) aggregate. Such insurance shall include contractual liability insurance.
 - 2. Comprehensive Business Automobile Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles used in the performance of the Contract.
 - 3. Worker's Compensation Insurance: Statutory coverage as required by federal, state, and county laws and regulations.
 - 4. Professional Liability, Errors, and Omissions Insurance: Liability limit of not less than One Million Dollars (\$1,000,000.00) in the event the deliverables, products, and/or services delivered pursuant to the Contract, either directly or indirectly, involve or require Professional Services.

- B. The minimum limits of coverage listed above shall not be construed as the maximum as required by the Contract or as a limitation of any potential liability on the part of the Contractor; nor shall failure by MCPS to request evidence of this insurance in any way be construed as a waiver of the Contractor's obligation to provide the insurance coverage specified. The Contractor must keep this insurance in full force and effect during the term of the Contract, including all extensions. If coverage is written on a claims made basis, the policy shall be endorsed to provide at least a three-year extended claims reporting provision.
- C. Insurance is to be placed with insurers licensed/approved to do business in the State of Maryland with a Best's rating of no less than A:VII, or if not rated with Best's, with a minimum surplus the equivalent of Best's surplus size VII, unless otherwise approved by the DMM Director. The Contractor's insurance coverage shall be primary. The Board of Education of Montgomery County and its officers, officials, agents, and employees shall be covered by endorsement, as additional insureds with respect to liability arising out of activities performed or to be performed by or on behalf of the Contractor in connection with the Contract. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or a lawsuit brought. Any insurance and/or self-insured program maintained by the Board of Education of Montgomery County or its officers, officials, agents, and employees shall not contribute to the Contractor's insurance or benefit the Contractor in any way.
- D. The Contractor shall provide MCPS with certificates of insurance within ten (10) days of execution of the Contract evidencing the coverage required above. The certificates shall confirm that the Board of Education of Montgomery County and its officers, officials, agents, and employees have been made additional insureds under the respective insurance policies. The Contractor must provide to MCPS at least thirty (30) days written notice of a cancellation of, or a material change to, an insurance policy. The Contractor must provide the certificates of insurance before commencing the work covered by the Contract.

ARTICLE 24. ORDER OF PRECEDENCE

Unless expressly agreed in writing by the Superintendent of Schools, these MCPS General Contract Articles shall take precedence over, supersede, and void any other provision of the Contract to the extent such other provision is contrary to or inconsistent with the MCPS General Contract Articles. For avoidance of doubt, to the extent that any provision of the Contract provides MCPS with additional or greater rights than those provided in the MCPS General Contract Articles, or any other provision of the Contract imposes requirements on the Contractor in addition to those set out in the MCPS General Contract Articles, such other provision shall be deemed to be supplemental to, and not contrary to or inconsistent with, the MCPS General Contract Articles.

ARTICLE 25. SEVERABILITY

Should any portion of the Contract be found illegal, the remainder shall remain in full force and effect and shall be binding on both Parties.

ARTICLE 26. GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with the laws of Maryland, without regard to conflicts of law provisions. Sole and exclusive jurisdiction for any action or proceedings arising out of or related to the Contract shall be in an appropriate state or federal court located in Maryland.

ARTICLE 27. ENTIRE CONTRACT

The Contract is binding between the Parties and constitutes the entire understanding between the Parties regarding the subject matter of the Contract and supersedes all prior or contemporaneous statements,

understandings and contracts, whether oral or written, between the Parties with respect to the subject matter of the Contract. Any changes and additions hereto shall not become binding upon any Party unless they are incorporated into a written contract amendment signed by the Parties.

ARTICLE 28. SUCCESSORS AND ASSIGNS

The Contract and all of its provisions shall apply to and bind the successors and assigns of the Parties. No assignment or transfer of the Contract or any part hereof, rights hereunder, or interest herein by the Contractor shall be valid unless and until it is approved in writing by MCPS and made subject to such reasonable terms and conditions as MCPS may impose. Unless performance is expressly waived in writing by the DMM Director, an assignment does not release the Contractor from responsibility for performance of the Contract.

ARTICLE 29. GUARANTEE

- A. The Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the RFP or solicitation, all deliverables, products, and/or services, including those used in the course of providing the deliverables, products, and/or services. This includes a guarantee that all such deliverables, products, and/or services carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the RFP or solicitation. The Contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to MCPS and to MCPS' satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by MCPS of the deliverables, products, and/or services.
- D. Deliverables, products, and/or services provided under the Contract must be of first quality, latest model, and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by MCPS.

Revised September 1, 2017

ATTACHMENT C
(List of Data Elements)

Information Provided Directly by MCPS

- Staff Account Information:
 - First and last name;
 - Email address;
 - State;
 - Affiliated school name;
 - Subjects of interest;
 - Role (e.g., teacher, school administrator, etc.).

Website Usage Information

- Information Collected Using Cookies:
 - IP address;
 - Browser type;
 - Operating system;
 - Domain name;
 - Date and time of Great Minds Website access;
 - Time spent on Great Minds Website;
 - Great Minds Website pages visited;
 - Other “click-stream” data.

**ADDENDUM 1
SERVICE LEVEL AGREEMENT**

This Great Minds Service Level Agreement (“SLA”) between Great Minds, Inc (“Great Minds”, “us”, or “we”) and the Board of Education of Montgomery County (“you” “Customer”) governs the use of the Eureka Math Navigator in accordance with the Agreement for Professional Services by and between Great Minds and the Customer dated 2/26/2019 (“Agreement”). If there is any conflict between the Agreement and this SLA, the Agreement shall govern.

1. Availability Service Level

1.1. Definition.

“Availability” shall mean the availability of the Eureka Math Navigator for use by Customer to view and download content and videos. Great Minds shall use commercially reasonable efforts to make Eureka Math Navigator available with a Monthly Uptime Percentage of at least 99.9% during any calendar month. Subject to the SLA Exclusions, if we do not meet the Service Commitment, you will be eligible to receive a Service Credit. Any unavailability of the Eureka Math Navigator resulting from scheduled maintenance for which Great Minds provided notice under Section 3 of this SLA will not be deemed to be non-Availability, except to the extent such scheduled maintenance time is in excess of eight (8) hours in the applicable calendar month.

1.2. Measurement.

Availability measurements of the Eureka Math Navigator shall be performed solely by Great Minds.

1.3. Service Level Commitment.

During each calendar month, Great Minds shall provide an average combined Availability of no less than 99.9%.

1.4. Incident Management Procedure.

Great Minds shall respond to an incident resulting in the Customer’s loss of use or functionality of Eureka Math Navigator (“Incidents”) in accordance with time intervals and other requirements corresponding to the applicable Incident priority levels set forth in the below table. Incident priority levels will be reasonably determined by Great Minds in a manner consistent with the below descriptions. The Customer shall provide commercially reasonable assistance to Great Minds in connection with Great Minds’ efforts to respond to an Incident.

Incident Priority	Incident Description	Response Time Service Level*
Priority 1:	<ul style="list-style-type: none"> • Service is down or unavailable; or • Service function is so severely impacted that there is, or if the Incident is not resolved there will likely be, a halt to Customer’s business; or 	Great Minds will respond to and commence efforts to fix a Priority 1 Incident within 2 hours after notification of such Incident from Customer. Great Minds shall acknowledge receipt of Customer’s initial notification of a Priority 1

Incident Priority	Incident Description	Response Time Service Level*
	<ul style="list-style-type: none"> • >95% of the end users at a school are unable to access or use the service. 	Incident within 1 hour, and shall provide status updates thereafter.
Priority 2:	<ul style="list-style-type: none"> • Service functionality is substantially impacted or significant service performance degradation is experienced with high impact to Customer's business operations affecting 75% to 95% of the end users at a school. 	Great Minds will respond to and commence efforts to fix a Priority 2 Incident no later than 12 hours after notification of such Incident from Customer. Great Minds shall acknowledge receipt of Customer's initial notification of a Priority 2 Incident within 2 hours, and shall provide status updates thereafter.
Priority 3:	<ul style="list-style-type: none"> • There is a partial, non-critical impact to service functionality or service performance degradation with medium to low impact to Customer's business operations at a school. 	Great Minds will respond to Priority 3 Incidents no later than 48 hours after notification of such Incident from Customer. Great Minds shall acknowledge receipt of Customer's initial notification of a Priority 3 Incident within 12 hours, and shall provide status updates thereafter.
Priority 4:	<ul style="list-style-type: none"> • Requests involving routine technical issues; or • Inquiries regarding service capabilities; or • Notice of minor service performance issues for which a fix or work around is available. 	As may be available or as may be included in a future update or version.

*In the event that the Customer reports an Incident outside of Great Minds' normal business hours, the respective time for Great Minds to respond to such Incident shall carry over to the next business day.

1.5. Sole Remedy.

Unless otherwise mutually agreed upon by the parties, your sole and exclusive remedy for any unavailability, non-performance, or other failure by us to provide the Services is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA. Customer shall be entitled to a Service Credit applied against future payments due from Customer to Great Minds. In event that the Availability falls below 99.9%, or Great Minds fails to meet a Response Time Service Level (as described in Section 1.4 above) in any given month, Great Minds agrees to provide the Customer a credit in the amount of 1/12th of the total annual amount of fees to be paid by the Customer to Great Minds for the currently applicable year under the Agreement. Unless otherwise mutually agreed upon by the parties, the foregoing remedy is Customer's sole and exclusive remedy, and Great Minds' sole and exclusive obligation, for any failure to meet any service level commitment. Such remedies may not be aggregated.

2. Conditions

2.1. Notification.

To receive credit for a non-Availability incident that has not been acknowledged by Great Minds, Customer must notify Great Minds within ten (10) business days after the end of the calendar month in which the non-Availability incident occurred and include therein the dates and times of each such incident. Great Minds shall make available to the Customer monthly uptime data for the Customer to determine whether an unacknowledged non-Availability incident has occurred in the previous calendar month.

2.2. Amounts.

Any and all remedies stated herein for any particular month shall not exceed the amount of the license fee applicable for such month. Any credits provided by Great Minds against future payments shall not affect Customer's obligation to pay to Great Minds amounts already due and payable.

2.3. Credits.

In all places where the term "credit" is used in this SLA, the parties acknowledge and agree that such term shall be understood to mean a credit that is to be applied against future amounts that become due and owing from Customer to Great Minds.

2.4. Exclusions.

The service level commitments stated herein shall not apply under any of the following circumstances: (i) any usage by Customer of the Eureka Math Navigator that violates the Agreement or this SLA; (ii) failure of any components or systems that are supplied by the Customer; (iii) force majeure events; (iv) Customer's negligent, reckless, or intentional acts or omissions, or the negligent, reckless, or intentional acts or omissions of others authorized by Customer to use the Eureka Math Navigator; (v) delays caused by Customer, Customer's facilities, or Customer equipment, or lack of access to facilities due to Customer's acts or omissions; and (vi) downtime arising from service and maintenance activities performed by or for Great Minds that occur during normal service periods.

3. Notifications

Great Minds shall provide Customer reasonable advance notification of scheduled maintenance to the Eureka Math Navigator. Notwithstanding the foregoing, Great Minds agrees that scheduled maintenance shall not occur Monday through Friday between 7:00 a.m. and 6:00 p.m.